



**Charles R. Lucy**  
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June 22, 2017

Office of the Secretary of the Air Force  
THRU: USAFA/A6 (FOIA)  
2304 Cadet Drive, Suite 3700  
USAF Academy, CO 80840-5001

**Re: FOIA Appeal, Mr. Joseph L. Bunecke – Case No. 2016-02507-F**

Dear Madam Secretary:

I am writing on behalf of my client, Mr. Joseph L. Bunecke (Lt. Col., USAF, Ret'd), to appeal the USAFA FOIA Requester Service Center's (USAFA's) 14 April 2017 response to his restated 5 April 2016 FOIA request. The USAFA response was received via email on 19 April 2017 and is attached to this appeal letter, together with Lt Col Bunecke's FOIA request.

Pursuant to DOD Manual 5400.07, *DOD Freedom of Information Act (FOIA) Program*, 25 January 2017, and 32 C.F.R. Part 286, implementing the Freedom of Information Act, 5 U.S.C. § 552, the specific reasons supporting this appeal are as follows:

1. Information requested in Items 5 and 7 of Lt. Col. Bunecke's 5 April 2016 FOIA request was not provided in USAFA's FOIA response and no reason was provided for the non-production. If USAFA is not the release authority for some or all of this information, then it is required to forward the request to the appropriate office for release. Several USAFA communications indicated that this had been done, and so a more complete response to each item is required. In this regard, it should be noted that Lt. Col Bunecke's 5 April 2016 FOIA request (Item 7) specifically requested, "Please refer this request to the appropriate release authority if not your office."

2. Several pages of information have been withheld under FOIA exemption (b)(5), but no explanation has been provided as to the general nature of the documents withheld or the specific grounds under which that exemption has been applied. In addition, it also appears that whole pages have been redacted without any attempt to conduct a line by line analysis to determine whether a partial release is appropriate as required by DoDM 5400.07, Section 5.1.e. Finally, several pages of information have been withheld with no explanation of the reason for their nonproduction. These pages may be found in the USAFA electronic file marked "USAFA-SAPR.pdf" at pages 481-485.

3. Out of the hundreds of pages of responsive materials produced by USAFA, most of which are from publically available regulations and briefings, hardly any reflect emails and other

## EXHIBIT E

**Holland & Hart LLP**

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correspondence relevant to Lt. Col Bunecke's FOIA request. Therefore, this appeal also requests that if such documents have been withheld, that a proper explanation be provided. If the documents no longer exist, then an explanation for their absence under the Federal Records Act is requested. Another relevant document which is missing is the syllabus and course materials from the AOC Masters Course related to Lt. Col. Bunecke's FOIA request, which should also be provided in response to this appeal.

Your prompt attention to this appeal is appreciated. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Charles R. Lucy".

Charles R. Lucy  
for Holland & Hart LLP

CRL/

Enclosures

cc: Joseph L. Bunecke

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE ACADEMY

14 April 2017

USAF FOIA Requester Service Center  
2304 Cadet Drive, Suite 3700  
USAF Academy CO 80840-5001

Mr. Charles Lucy  
c/o Holland & Hart, LLP  
90 S. Cascade Ave Suite 1000  
Colorado Springs, CO 80903

Dear Mr. Lucy

This is the final response and the final installment to your 5 April 2016 Freedom of Information Act request for the following information from USAFA:

1. For calendar years 2013 through 2015, all regulations and policy guidance in effect relating to cadet disciplinary actions and disenrollments for sexual misconduct.
2. For calendar years 2013 through 2015, all regulations and policy guidance in effect relating to late graduation.
3. From 1 January 2013 to the present, any and all regulations, policies, and guidance containing processes and procedures the Academy had in place, has put in place, or has amended to address reports of sexual assault and threats of violence against USAFA cadets. Included in this request is a specific request for the USAFA Sexual Assault Prevention and Response Strategic Plan for calendar years 2013 through 2016, and all amendments thereto. Also included in this request are all internal policies and guidance applicable to cadet access to firearms generally, and when suspected of an offense or under investigation.
4. For calendar years 2013 to the present, all information relating to sexual assault training programs and procedures at USAFA. Included in this request are AOC training programs/courses and the syllabus from AOC's Master Course.
5. For calendar years 2012 to the present, all sexual assault surveys and responses, as well as all recommendations and actions resulting therefrom, including all "lessons learned" and analysis of compliance with DODI 6495.02
6. The Military Service Academy Report to Congress for 2013-2014, dated February 2015, and all internal memoranda, staff summary sheets, forwarding documentation and attachments related thereto, including any references to sexual assault cases at USAFA.
7. For calendar years 2013 to the present, all USAFA IG and DOD IG reports regarding or related to the processing of sexual assault complaints and threats of violence at USAFA, including recommendations for change. Include all policies and procedures related to the involvement of the chain of command and relevant OPRs. Please refer this request to the appropriate release authority if not your office.

This information was reviewed under The Privacy Act of 1974 (as supplemented by Air Force Instruction 33-332, *Privacy Act Program*) and the Freedom of Information Act, United States Code, Title 5 (as supplemented by DoDR 5400.7-R, *DoD Freedom of Information Act Program*). We reviewed 1307 pages of records responsive to Item #s 4, 6-7 of this request. Information regarding Item #5 is publicly accessible on-line at <http://sapr.mil/index.php/reports/sapro-reports/annual-reports-archive>. Items 1-3 were provided in the first incremental release.

*Developing Leaders of Character*

We have partially withheld information from release as it contains information considered privileged in litigation, primarily under the deliberative process privilege and personal information in other files that, if disclosed, would result in a clearly unwarranted invasion of personal privacy. The authority for this exemption is United States Code, Title 5, Section 552 (b)(5) and (b)(6) of the Freedom of Information Act.

You may appeal this decision by writing to the Secretary of the Air Force within 90 days of the date of this letter. Include in your appeal your reasons for reconsideration and attach a copy of this letter. Address your letter as follows:

Office of the Secretary of the Air Force  
Thru: USAFA/A6 (FOIA)  
2304 Cadet Drive, Suite 3700  
USAF Academy CO 80840-5001

The Freedom of Information Act (FOIA) provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed your request in the "Other" fee category; however, in this case, we have waived collecting fees.

Sincerely

4/14/2017

**X David J. Hluska**

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DAVID J. HLUSKA, CM, DAF  
Chief, CIO Support Division  
Signed by: HLUSKA.DAVID.J.1024062909



**Charles R. Lucy**  
**Of Counsel**  
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[clucy@hollandhart.com](mailto:clucy@hollandhart.com)

April 5, 2016

VIA CERTIFIED MAIL AND EMAIL

USAFA FOIA Requester Service Center  
2304 Cadet Drive, Suite 3700  
USAF Academy, CO 80840-5001

**Re: FOIA Request on Behalf of Mr. Joseph L. Bunecke (Lt Col, Ret.)**

Dear Sir/Madam:

This is in response to your 31 March 2016 letter closing your actions on my original 21 July 2015 Freedom of Information Act (FOIA) request on behalf of my client, Lt Col Joseph L. Bunecke, USAF, Ret. When we spoke over the phone on 17 March 2016 regarding this matter, I told you that I would attempt to make my request more specific to facilitate a response by your office. I did not consent to any action closing the case, and respectfully request that it be reopened based upon my amended request below. Please let me know if these changes will be sufficient to permit your speedy reply on behalf of the Academy. Lt Col Bunecke and I would also be willing to meet with your office personally to discuss this request and answer any additional questions that you may have.

The documents and information I am requesting are in the possession of the Department of the Air Force relate to the sexual assault on Lt Col Bunecke's daughter, Kirsten Bunecke, at or near the USAF Academy in January 2013. I am therefore addressing this request to your office to expedite processing. Pursuant to paragraph C1.4.2 of DOD Directive 5400.7/Air Force Supplement, *DOD Freedom of Information Act Program*, 24 June 2002, implementing the Freedom of Information Act, 5 U.S.C. 552 and AFI 33-332, *Air Force Privacy Act Program*, 29 January 2004, implementing the Privacy Act, 5 U.S.C. 552a, I hereby request the following information from USAFA:

1. For calendar years 2013 through 2015, all regulations and policy guidance in effect relating to cadet disciplinary actions and disenrollments for sexual misconduct.
2. For calendar years 2013 through 2015, all regulations and policy guidance in effect relating to late graduation.
3. From 1 January 2013 to the present, any and all regulations, policies, and guidance containing processes and procedures the Academy had in place, has put in place, or has amended to address reports of sexual assault and threats of violence against USAFA cadets. Included in

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4. For calendar years 2013 to the present, all information relating to sexual assault training programs and procedures at USAFA. Included in this request are AOC training programs/courses and the syllabus from AOC's Master Course.

5. For calendar years 2012 to the present, all sexual assault surveys and responses, as well as all recommendations and actions resulting therefrom, including all "lessons learned" and analysis of compliance with DODI 6495.02.

6. The Military Service Academy Report to Congress for 2013-2014, dated February 2015, and all internal memoranda, staff summary sheets, forwarding documentation and attachments related thereto, including any references to sexual assault cases at USAFA.

7. For calendar years 2013 to the present, all USAFA IG and DOD IG reports regarding or related to the processing of sexual assault complaints and threats of violence at USAFA, including recommendations for change. Include all policies and procedures related to the involvement of the chain of command and relevant OPRs. Please refer this request to the appropriate release authority if not your office.

The above requests are made in the spirit of DOD 5400.7-R which emphasizes DOD policy in favor of disclosure (DOD5400.7-R\_AFMAN 33-302, paragraph C1.5.2., October 21, 2010) and strongly discouraging procedural roadblocks to disclosure (Id., paragraph C1.5.3.). In this regard, it is incumbent upon the Air Force to comply with the spirit as well as the intent of the FOIA. In this case, DOD 5400.7-R and AFMAN 33-302, paragraphs C1.3.1.1. mandate that the benefit of the doubt be given to the requester. This includes openness with the public, especially where the public's interest in the information is paramount. Such an interest is clearly present where the safety and security of its service academy cadets is implicated.

Due to the nature of this request, Lt Col Bunecke respectfully requests that all search and copying fees be waived because his request is in the public interest and likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and its components. Without question, his request falls squarely within the tests enumerated in DOD 5400.7-R, paragraph C6.1.4.3.1 to determine the public interest fee exception for FOIA requests.



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Please do not hesitate to contact the undersigned with any questions you may have regarding this appeal.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles R. Lucy by off".

Charles R. Lucy  
Of Counsel  
for Holland & Hart LLP

CRL/cal

cc: Joseph L. Bunecke, Lt Col (USAF, Ret.)

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